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April 20, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: In the Matter of the Petition of the State of Minnesota for Declaratory Ruling
CC Docket No. 98-1
Ex Parte Filing**

Dear Ms. Salas:

This letter is submitted on behalf of the Intelligent Transportation Society of America ("ITS America"), a participant in the above-referenced proceeding, to inform the Commission of an appeal that was filed in response to the federal district court's decision in Cablevision of Boston, Inc. v. Public Improvement Commission of the City of Boston, et al., C.A. No. 98-12531-MLW (D. Mass. Jan. 27, 1999) ("Cablevision of Boston"), a copy of which ITS America submitted to the Commission on February 11, 1999, for inclusion in the public record in CC Docket No. 98-1.

On February 11, 1999, ITS America submitted an *ex parte* letter to the Commission concerning the U.S. District Court for the District of Massachusetts' decision in Cablevision of Boston, a case which interprets Section 253 of the Telecommunications Act of 1996. In the February letter, ITS America emphasized the significance of the case to the Commission's resolution of Minnesota's petition for declaratory ruling. As background, the February letter noted that Cablevision brought a suit in the federal district court in an apparent effort to prevent Boston Edison Company (a public utility operating in the City of Boston), RCN Corporation and their affiliates from using electric conduit for commercial telecommunications services. Further, Cablevision sued the City of Boston, alleging that the City was managing its rights-of-way in a discriminatory manner, in violation of Section 253 of the 1996 Act. As ITS America pointed out

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in its February 11 letter, the district court fully rejected Cablevision's claims under Section 253, finding that:

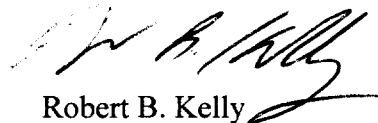
Section 253(c) does not impose any mandatory obligation on the City of Boston. Rather, . . . § 253(c) is intended to recognize the inherent authority of municipalities to manage the use of their rights of way. Section 253(c) exempts actions by municipalities regarding their rights of way from the administrative process for preemption by the Federal Communications Commission ("FCC") established by § 253(d).¹

In the February letter, ITS America further pointed out that the district court observed that a reading of the language of Section 253(d) indicated that Congress did not intend for the regulation of rights of way by local governments to be subject to the FCC administrative process for determining questions of preemption.²

By this letter, we advise the Commission that, on February 26, 1999, Cablevision filed an appeal of the district court's decision in Cablevision of Boston, and has been assigned case number 99-1222; that Appellant Cablevision has already filed its opening brief; and that Appellees' briefs are due on April 27, 1999.

Pursuant to Section 1.1206 of the Commission's Rules, an original and one copy of this letter are being filed with your office for inclusion in the public record in the above-referenced proceeding. If you have any questions concerning this submission, please contact the undersigned.

Sincerely,



Robert B. Kelly

*Counsel for the Intelligent
Transportation Society of America*

¹ Cablevision of Boston at 16 (internal citations omitted).

² See id. at 18 n.1.

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RBK/beb

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